

SCANNED

DATE: 08/05/04

BY: SKY

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

HARRY G. and JACQUELINE
SCHORTMANN,

Plaintiffs,

v.

INTERNAL REVENUE SERVICE OF
THE UNITED STATES GOVERNMENT,

Defendant.

Civil No. 04-11011-MLW

REQUEST OF THE UNITED STATES TO EXTEND ANSWER DEADLINE

On May 19, 2004, plaintiff filed the instant action seeking payment of an unspecified amount of interest allegedly owed to him by the Internal Revenue Service. A copy of this complaint was served on the Office of the United States Attorney on June 9, 2004. The defendant United States respectfully requests this Court to enter an order enlarging, to and including September 8, 2004, the time in which the United States shall be permitted to serve an answer, a motion, or such other response as may be permitted by the Federal Rules of Civil Procedure, with respect to the complaint in the above-titled action. No memorandum is submitted in support of this request as it is not a motion. As provided by Rule 6(b)(1) of the Federal Rules of Civil Procedure, the district court has discretion to grant requests to enlarge time "without motion or notice before the expiration of the period." (emphasis added) In contrast, Rule 6(b)(2) limits enlargements to the granting of motions made upon grounds of excusable neglect. Accordingly, here we are making a timely request under Rule 6(b)(1).

As grounds for this request, the United States asserts that its counsel has not received the administrative file from the Internal Revenue Service and has thus been unable to formulate a meaningful response to the complaint. In addition, counsel for the United States is working with the plaintiffs in an effort to determine precisely what relief is sought from this Court, and the basis for that relief. For example, it appears from the face of the complaint that the plaintiffs may be seeking interest only from the Internal Revenue Service, in which case jurisdiction is proper not in this Court, but in the Court of Federal Claims. Therefore, the United States seeks an additional thirty days from the date its answer was originally due, to and including September 8, 2004, to serve an answer or other responsive pleading. A proposed order is attached.

I hereby certify that a true copy of the above document was served upon (each party appearing pro se and) the attorney of record for each other party by mail on

7/29/04 - Lydia D. Bottome

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

BARBARA HEALY SMITH
Assistant United States Attorney

/s/ Lydia D. Bottome
LYDIA D. BOTTOME
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 55
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 307-6560
Lydia.D.Bottome@usdoj.gov

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

HARRY G. and JACQUELINE
SCHORTMANN,

Plaintiffs,

v.

INTERNAL REVENUE SERVICE,

Defendant.

)
)
)
)
)
)
)
)
)
)

Civil No. 04-11011-MLW

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the time in which the United States shall be permitted to serve an answer, a motion, or such other response as may be permitted by the Federal Rules of Civil Procedure, with respect to the complaint in the above-titled action is enlarged to and including September 8, 2004.

DATED: This _____ Day of August, 2004.

UNITED STATES DISTRICT JUDGE